

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

IN RE: AQUEOUS FILM-FORMING FOAMS  
PRODUCTS LIABILITY LITIGATION

MDL No. 2:18-mn-2873-RMG

This Document relates to:  
ALL CASES

**THE PLAINTIFFS' CO-LEAD COUNSEL MOTION  
TO AMEND CMO 2 BY ADDING A FOURTH CO-LEAD COUNSEL**

**INTRODUCTION**

The undersigned Plaintiffs' Co-Lead Counsel ("PCLC"), appointed by Case Management Order No. 2, respectfully submit that the Court include and add a fourth Co-Lead Counsel. This MDL has now matured to the point that another Co-Lead Counsel would benefit the ever-expanding panoply of plaintiffs in this litigation.

**FACTUAL BACKGROUND**

The PCLC have demonstrated their bona fides by negotiating two landmark settlements with DuPont, Chemours and Corteva for \$1.185 billion and with 3M for up to \$12.5 billion on behalf of water providers, settlements which are pending preliminary approval before this Court; including, *inter alia*, the massive discovery, bellwether proceedings, and briefing of critical motion practice (government contractor, summary judgment and *Daubert* issues). These settlements were achieved on the eve of trial — only after years of hard-fought litigation and painstaking trial preparation — by skilled counsel of the highest caliber. Each settlement standing alone is a

tremendous accomplishment and a testament to the tenacity of the PCLC and their ability to deliver zealous representation to the plaintiffs in MDL 2873. Combined, these historic settlements will not only advance this litigation by delivering funds necessary to help compensate public water suppliers for the costs to remediate their contaminated water supplies, but will also substantially advance public health, by providing cleaner and safer drinking water to over 150 million customers of these public water suppliers. The 3M settlement alone represents the largest single source of funding for PFAS remediation by far, to date.

Naturally, the PLLC are proud of their past accomplishments — but we also recognize that there is still more to do be done. Specifically, the challenges ahead include an expanding litigation front in this MDL, including the need to address personal injury claims for non-AFFF based products (e.g., turnout gear), as well as other still-unsettled claims (such as personal injury, medical monitoring, and property damage claims) that must be resolved. To better equip the MDL for these future challenges, the PCLC believe that an expanded Co-Lead Counsel structure is appropriate.

By expanding our leadership team to include an experienced lawyer who has been at the forefront in handling claims in the expanding personal injury docket as well as claims of other types of plaintiffs, the PCLC can continue to address the evolving and still-unresolved claims in this complex and growing MDL. This expanded leadership structure would ensure the vigorous protection of the rights of all plaintiffs in this massive proceeding. To this end, the PCLC propose and nominate Mr. Joseph F. Rice, a co-founder of the Motley Rice LLC law firm.

Mr. Rice's pedigree is impressive. Recognized as an outstanding attorney not just in South Carolina, but nationwide, he enjoys a well-deserved reputation of the highest regard for participating at the forefront of some of the most important litigation, including the National

Prescription Opiate MDL, the Volkswagen Diesel Emissions Fraud MDL, and the BP Oil Spill MDL.

The PEC acknowledges that Fred Thompson, also of the Motley Rice firm, has been a PEC member and served as Liaison Counsel since the issuance of CMO 2 on Day One. The PCLC submits this proposed appointment of Mr. Rice not to supplant Mr. Thompson's role as Liaison Counsel, but rather to enable Mr. Rice to assist in the future on matters beyond the settlements which have already been accomplished. Given the unusual circumstance of two members of the same firm serving on the PEC, the firm of Motley Rice will be afforded only one PEC vote.

## **ARGUMENT**

For decades, the Fourth Circuit has recognized that a district court needs "to have broad discretion in coordinating and administering multi-district litigation." *In re Showa Denko K.K. L-Tryptophan Prod. Liab. Litig.-II*, 953 F.2d 162, 165 (4th Cir. 1992). This Court's responsibility to oversee the MDL "requires" it to "be allowed to . . . appoint lead counsel" to administer the proceedings to promote the "just and efficient conduct of such actions." *Id.* (quoting 28 U.S.C. §1407(a)). This Court has already exercised its authority to appoint and re-appoint the PCLC and members of the PEC to their respective leadership positions. Such organization of disparate plaintiffs' counsel is vital to ensuring that the various interests of the myriad plaintiffs are protected and to meet the administrative goals of the MDL.

To be sure, CMO 2 as amended advances these goals. But CMO 2 has always reserved authority for the Court to revise the composition of the PEC through the annual review of appointments to the Committee's structure. This Court therefore has broad authority to appoint Mr. Rice to join as Co-Lead Counsel with the other PCLC. The PCLC submit that this litigation

is now situated such that it would benefit from an additional Co-Lead Counsel to promote the sound administration of the plaintiffs' interests in this MDL.

## **CONCLUSION**

The PCLC are hopeful that the addition of Mr. Rice as Co-Lead Counsel would not only assist the PEC and all plaintiffs in moving forward, but also ensure more comprehensive representation moving forward. We kindly request the Court to consider this motion in light of our commitment to optimizing the advocacy for all involved plaintiffs.

Dated: August 21, 2023

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*Co-Lead Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was electronically filed with this Court's CM/ECF on this 21st day of August, 2023 and was thus served electronically upon counsel of record.

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